

FINAL STATEMENT OF REASONS

a) Specific Purpose of the Regulations and Factual Basis for Determination that Regulations Are NecessarySections 31-137.1, 31-137.11 and 31-137.12Specific Purpose:

These sections were adopted to define transitional care as the time period between removal of a child from his/her home, an approved or licensed care provider or a person the child has been detained with and the placement or detention of that child.

Factual Basis:

Current law authorizes a county Child Welfare Services (CWS) Social Worker or probation officer to take and maintain temporary custody of a minor who has been declared a dependent child of the juvenile court or who the social worker or probation officer has reasonable cause to believe is a child who has suffered serious harm or is at substantial risk of suffering serious harm as a result of abuse or neglect. Current law authorizes a county CWS Social Worker or probation officer to maintain custody of a child until the child is placed or detained in the home of a relative, nonrelative extended family member or a licensed home or facility. Once a child is so placed, the current law imposes upon the care provider duties to provide adequate care and supervision. There are, however, currently no laws or regulations which establish a duty on the county CWS or probation agency to provide adequate care and supervision to children in its custody. These regulations are designed to fill that gap and to ensure that standards of care and supervision apply immediately upon removal of a child from his/her home or placement setting by a county CWS or probation agency.

Final Modification:

The word "a" was added for grammar correctness. The word "children" was changed to "child" for consistency.

Section 31-137.2Specific Purpose:

This section was adopted to establish health and safety standards that are applicable when a child is in transitional care.

Factual Basis:

It is the duty of the California Department of Social Services (CDSS) to ensure the health and safety of a child while he/she is in transitional care. The child is entitled to health and

safety protections from the moment of removal from the parental home or placement setting.

Sections 31-137.21, 31-137.211, 31-137.212, 31-137.213, 31-137.214, 31-137.215 and 31-137.215

Specific Purpose:

This section was adopted to establish the requirement that a county CWS or probation agency provide or ensure the provision of adequate care and supervision of a child while that child is in transitional care. Adequate care and supervision includes: adequate food, supervision by an adequate number of trained staff, age-appropriate activities, ensuring the child's medical needs are met and protecting the personal rights of children, including meeting the appropriate educational needs of the child. This requirement will apply regardless of whether the child is under the direct care and supervision of county CWS or probation agency staff, or if during the transitional care period the county CWS Social Worker or probation officer places the child with any third party, including but not limited to an assessment or receiving center.

Factual Basis:

Pursuant to W&I Code section 16501(a), a child who is under the custody and control of the county CWS or probation agency is entitled to receive adequate care and supervision in order to protect his/her health and safety. Currently there is no regulation that operationalizes this requirement in this setting. Some county CWS or probation agencies temporarily place a child in an assessment or receiving center or unregulated facility operated by a third party. These centers are typically child-friendly locations that, at this time, are not required to be licensed. In order to ensure that a child receives adequate care and supervision in these centers, it is necessary to impose upon the county CWS or probation agency a continuing duty to ensure that adequate care and supervision is provided to a child in transitional care.

Final Modification:

In Section 31-137.211, the word "adequate" was deleted for clarity. The letter "f" was uppercased in the word "Food" because for grammar correctness. The sentence "meet the nutritional, medical, and age-appropriate needs of the child" was added for clarity.

In Section 31-137.212, the phrase "an adequate number of" was deleted for clarity. The word "trained" was added after the words "Supervision by" for clarity. The phrase "in a sufficient number" was added for clarity. The duplicate word "trained" was deleted following the words "in a sufficient number" because it is not necessary. The phrase "of each child" was added for consistency and clarity. The word "to" was added for grammar correctness. The word "each" was added for clarity and the word "children" was changed to the word "child" for consistency.

In Section 31-137.215, the word "each" was added for clarity and the word "children" was changed to the word "child" for consistency.

In Handbook Section 31-137.215, the word "each" was added for clarity and the word "children" was changed to the word "child" for consistency.

Section 31-137.22

Specific Purpose:

This section was adopted to require that an adult having regular contact with a child in transitional care has a California criminal record clearance pursuant to Health and Safety (H&S) Code section 1522. This requirement will apply regardless if the child is under the direct care and supervision of county CWS or probation agency staff, or if, during the transitional care period the county CWS or probation agency places the child with any third party, including but not limited to an assessment or receiving center. The H&S Code section 1522 requires fingerprint identification as a condition of issuing a license, permit or certificate of approval for a person to operate or provide direct care services in a community care facility, foster family home (including a relative and Nonrelative Extended Family Member) or a certified family home of a licensed foster family agency. An individual shall be required to obtain either a criminal record clearance or a criminal record exemption from the CDSS before his or her initial presence.

Factual Basis:

Requiring an adult who has regular contact with a child in transitional care to have a California criminal record clearance will promote the health and safety of the child by ensuring that an adult with a criminal conviction will not have regular contact with the child. It is well accepted that adults with certain criminal convictions pose an unreasonable risk to the health and safety of a child in care. Accordingly, to ensure the health, safety and welfare of transitional care, a requirement protecting a child from adults with criminal convictions is necessary.

Final Modification:

The word "regular" was deleted for clarity.

Section 31-137.23

Specific Purpose:

This section was adopted to require that a check of the Child Abuse Central Index (CACI) has occurred for all adults who have regular contact with a child in transitional care consistent with H&S Code section 1522.1. This requirement will apply regardless if the child is under the direct care and supervision of county CWS or probation agency staff, or if, during the transitional care period the county CWS or probation agency places the child with any third party, including but not limited to an assessment or receiving center. An

individual shall be required to obtain either a criminal record clearance or a criminal record exemption from CDSS before his or her initial presence.

Factual Basis:

Requiring an adult who has regular contact with a child in transitional care to have a CACI clearance will promote the health and safety of the child by ensuring that an adult with a criminal conviction will not have regular contact with the child. It is well accepted that adults with certain criminal convictions pose an unreasonable risk to the health and safety of a child in care. Accordingly, to ensure the health, safety and welfare of transitional care, a requirement protecting a child from adults with criminal convictions is necessary.

Final Modification:

The word "regular" was deleted for clarity.

Sections 31-137.24, 31-137.241, 31-137.242 and 31-137.243

Specific Purpose:

This section was adopted to establish the requirement that a county CWS or probation agency ensure that the physical environment where a child in transitional care is located is free from undue hazards. This requirement will apply regardless if the child in transitional care is located on county property or is located elsewhere, including county vehicles used to transport a child or a facility such as an assessment or receiving center operated by a third party.

Factual Basis:

The requirement that the county CWS or probation agency provide a physical environment that adequately protects the health and safety of the child including, but not limited to, adhering to local zoning, safety and building ordinances. Accordingly, to ensure the health, safety and welfare of a child in transitional care, a requirement protecting that child from hazards in his/her immediate physical environment is necessary.

In Section 31-137.24, the phrase "is safe, clean, sanitary, and in good repair at all times" was added for clarity. The phrase "adequately protects the health and safety of the child" was deleted for clarity.

In Section 31-137.242, the word "adequate" was deleted for clarity. The phrase "that address the physical and age appropriate" was added for clarity. The phrase "when needed that meet" was deleted for clarity. The word "each" was added for clarity and the word "children" was changed to the word "child" for consistency.

In Section 31-137.243, the word "adequate" was deleted for clarity. The word "working" was added FOR clarity. The phrase "that address the physical, and age-appropriate privacy needs of each child" was added for clarity.

Sections 31-137.3, 31-137.31, 31-137.311 and 31-137.32Specific Purpose:

This section was adopted to ensure that the length of time a child remains in a transitional care assessment or receiving center or other unlicensed child care facility or location shall be less than 24 hours. This section also requires documentation of stays of 24 hours or longer.

Factual Basis:

Community Care Licensing law requires the operator of a child care or residential facility that provides care for a 24-hour period or longer to have a license as specified in H&S Code section 1502. Therefore, a center that provides care and supervision to a child in transitional care for a 24-hour period or longer is operating in violation of law. This rule is necessary to ensure that the county CWS or probation agency is not placing a child in transitional care in a location that is operating in violation of law. Documentation of stays of 24 hours or more is necessary to address noncompliant overstay.

Final Modification:

In Section 31-137.3, the phrase "may remain in an assessment or receiving center or other unlicensed child care facility or location" was deleted for clarity.

Section 31-137.31 was added for clarity.

In Section 31-137.32, the phrases "In addition to documentation required in .31" and "shall specifically identify" were added for clarity. The phrase "shall document in the child's case file" was deleted for clarity.

Section 31-137.311 was deleted because it duplicate language in Section 31-137.31.

In Section 31-137.32, the section number ".32" was deleted because it was duplicative. The section number ".33" was added to correct the section number sequence.

Sections 31-137.4, 31-137.41, 31-137.42, 31-137.43, 31-137.44, 31-137.45Specific Purpose:

This section was adopted to describe the oversight responsibilities and authority of CDSS to investigate complaints, conduct inspections of the buildings or grounds where a child in transitional care is located, interview individuals relating to the provisions of transitional care, develop or review corrective action plans developed by the county CWS or probation agency to correct identified deficiencies, monitor county CWS and probation agency compliance with the approved corrective action plan or take other actions authorized under Welfare and Institutions (W&I) Code section 10605.

Factual Basis:

To ensure county CWS and probation agency compliance, it is necessary to authorize CDSS to exercise oversight and monitoring responsibilities for transitional care. Fundamental to proper oversight is the authority to investigate complaints concerning transitional care and to conduct on-site reviews of persons providing transitional care and locations where transitional care is being provided.

If in the course of such oversight activities CDSS identifies non-conformance with the requirements set forth in Section 31-137.4 through Section 31-137.45, it is necessary for the CDSS to have the authority to ensure that those deficiencies are corrected by the county CWS or probation agency. It is well established that the development and execution of a corrective action plan is an effective mechanism to ensure county CWS and probation agency compliance with laws or regulations, and that such authorities are not prohibited by law. The W&I Code section 10605 provides the authority for the CDSS to take these appropriate actions to ensure compliance with the requirements set forth in Section 31-137.4 through Section 31-137.45.

Final Modification:

In Section 31-137.4, the word "may" was deleted for clarity and the word "shall" was added for clarity, and to make it a requirement.

In Section 31-137.41, the phrase "which may include" was added to clarify.

In Sections 31-137.42 through 31-137.45, the letters "ing" were added to each of the words "Conduct," "Develop," "Monitor" and "Take" respectively for grammatical correction. In addition, the subsection numbers were renumbered for consistency purposes.

Section 31-137.5Specific Purpose:

This section was adopted to allow CDSS to delegate its authority to the Community Care Licensing Division (CCLD), as appropriate, to ensure prompt complaint response and deficiency correction. For this purpose, CCLD will only act under the scope of the authority delegated by CDSS.

Factual Basis:

Complaint response and deficiency correction may require site visits and investigations on short notice and in remote areas of California. The CCLD has field offices located throughout the State and are able to respond promptly. Moreover, the CCLD has expertise in conducting child health and safety complaint investigations for licensed child care and children's residential facilities, as well as conducting site visits to ensure compliance with corrective action plans. Accordingly, to ensure expeditious complaint response and prompt

deficiency correction throughout the State, it is necessary to authorize CDSS to delegate its oversight and monitoring authority to CCLD to perform these activities.

Final Modification:

The word "appropriate" was deleted for clarity and the phrase "activities listed in .41" was added for clarity. The words "of this section" were deleted for clarity.

c) Local Mandate Statement

These regulations do not impose a mandate upon local agencies or school districts. There are no "state-mandated local costs" in these regulations which require state reimbursement under Section 17500 et seq. of the Government Code.

*Please notice that the Notice of Proposed Action initially stated that these regulations do impose a mandate upon local agencies. However, this is an error. As stated above, these regulations do not impose a mandate upon local agencies.

d) Statement of Alternatives Considered

The CDSS considered alternatives other than developing regulations and, pursuant to Government Code section 11346.9(a)(4), determined that no reasonable alternative considered or that has otherwise been identified and brought to the attention of CDSS would be more effective in carrying out the purpose for which the regulations are proposed, would be as effective and less burdensome to affected private persons than the adopted regulation, or would be more cost-effective to affected private persons and equally effective in implementing the statutory policy or other provision of law.

e) Statement of Significant Adverse Economic Impact on Business

The CDSS determined that the proposed action will not have a significant, statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states. This determination was made based on a fiscal impact analysis by the department, stating that the adoption of these regulations would solely impact policies and procedures within CDSS and County Child Welfare Agencies.

f) Testimony and Response

These regulations were considered as Item # 1 at the public hearing held on July 20, 2016, in Sacramento, California. Written testimony was received from the following during the 45-day comment period from June 3, 2016 to 5:00 p.m. July 20, 2016:

Comments from Disability Rights California (DRC)1. ACIN No. I-07-14Comment:

The DRC requests that the regulations specifically outline the services provided in the ACIN No. I-07-14, dated April 14, 2014. They also instruct CWS and probation agencies that children in transitional care prior to placement are eligible for Early and Periodic Screening, Diagnosis, & Treatment and request that CWS and probation agencies be instructed to facilitate evaluations, amendments to students' Individualized Education Plans if necessary and transition planning for age appropriate youth as required under state and federal law.

Response:

We thank you for your comment; however, we cannot accept this recommendation at this time. The CDSS intends for these regulations to be applied broadly to transitional care settings so as to ensure that all children in care are provided adequate care and supervision. Section 31-137.3 establishes the length of time a child may remain in transitional care shall be less than 24 hours. It should be further noted that under some circumstances, transitional care may be provided in an unconventional setting; therefore, it is not appropriate to specifically mandate all services in the regulations.

The CDSS values the importance of meeting all the needs of children in transitional care. Section 31-137.215 states the personal rights of children should be protected consistent with W&I Code section 16001.9, considering the transitional care setting. The CDSS intends the handbook section in the regulations package to serve as examples of reasonable actions staff should take to address the needs of the children within this setting.

Comments from County Welfare Directors Association of California (CWDA)1. Section 31-137.31Comment:

The CWDA is concerned that the term "child's caseworker" should be made less specific so that a placement worker could also document information in the child's case file.

Response:

We thank you for your comment. We will be adding "and/or any other worker involved in the placement of the child" to follow "the child's caseworker."

Comments from California Coalition for Youth (CCY)

1. Section 31-137.13

Comment:

The CCY recommends adopting this new section to read:

"The time period between identification of foster youth who has run or gone missing from care by a runaway and homeless youth shelter and the placement of that child with another licensed or approved care provider or a person providing care pursuant to Welfare and Institutions Code Section 309(d)(1)."

Response:

We thank you for your comment; however, we cannot accept this recommendation at this time. The CDSS believes the definition provided in Section 31-137.1 adequately describes the meaning of transitional care. The CDSS intends these regulations to be applied broadly to transitional care settings where a child may be situated while appropriate placement is located.

2. Section 31-137.3

Comment:

The CCY requests to add the statement "A child may remain in a licensed runaway and homeless youth shelter for more than 24 hours." onto this adopted section. In addition, CCY is requesting to add the following handbook section:

"HANDBOOK BEGINS HERE

Health and Safety Code Section 1502.35 provides:

(k) A runaway and homeless youth shelter is not an eligible placement option pursuant to Sections 319, 361.2, 450, and 727 of the Welfare and Institutions Code.

(l) A runaway and homeless youth shelter's program shall not be eligible for a rate pursuant to Section 11462 of the Welfare and Institutions Code. This does not preclude a runaway and homeless youth shelter from receiving reimbursement for providing services to a foster youth as may be provided at the discretion of a county.

HANDBOOK ENDS HERE"

Response:

We thank you for your comment; however, we cannot accept this recommendation at this time. It is outside of the scope of the current regulations package. Such

amendment would require further analysis into how we would ensure the needs of youth and families were met in regards to foster care services in such setting.

3. Section 31-137.33

Comment:

The CCY requests this adopted section to read: "Transitional care may be provided by a runaway and homeless youth shelter."

Response:

We thank you for your comment; however, we cannot accept this recommendation at this time. It is outside of the scope of the current regulations package. Such amendment would require further analysis into how we would ensure the needs of youth and families were met in regards to foster care services in such setting.

Comments from Children's Advocacy Institute (CAI)

1. Section 31-137.215

Comment:

The CAI recommends changing proposed Handbook Section 31-137.215 to read:

"HANDBOOK BEGINS HERE

Efforts shall be made to protect and adhere to the personal rights of children to the extent possible in a transitional care setting. For example, while it may be difficult to meet a child's educational right to attend their school of origin, all attempts should be made to facilitate the child's attendance at their school of origin during the period of transitional care. Should attendance at the child's school of origin be deemed not possible, the reason for the impossibility should be documented in the case file and other temporary educational needs can must be reasonably fulfilled. Such activities may include supporting communication with the child's school, accommodating for completion of the child's homework, or facilitating the child's attendance to Individual Education Plan (IEP) meetings and other significant school events.

HANDBOOK ENDS HERE"

Response:

We thank you for your comment; however, we cannot accept this recommendation at this time. The CDSS intends these regulations to be applied broadly to transitional care settings so as to ensure that all children in care are provided adequate care and supervision. Section 31-137.3 establishes the length of time a child in transitional care may remain in transitional care shall be less than 24 hours. It should be further noted that under some circumstances, transitional care may be provided in an unconventional

setting; therefore, it is not appropriate to specifically mandate all services in the regulations.

The CDSS values the importance of meeting all the needs of children in transitional care. Section 31-137.215 states the personal rights of children should be protected consistent with W&I Code section 16001.9, considering the transitional care setting. The CDSS intends the Handbook section in the regulations package to serve as examples of reasonable actions staff should take to address the needs of the children within this setting.

Comments from County of San Diego

1. Section 31-137.3

Comment:

San Diego County recommends amending this section to read:

".3 The length of time a child in transitional care may remain in an unlicensed assessment or receiving center or other unlicensed child care facility or location shall be less than 24 hours.

.31 The child's caseworker shall document in the child's case file any location where the child stayed for a period of 24 hours or more during the period of transitional care, and information explaining why the child was not placed in an emergency placement with a relative or nonrelative extended family member or in an approved or licensed home or facility during this time period.

.311 ~~The child's caseworker~~ County child welfare staff shall enter the child's removal time, removal date, and location in the child's case file within 12 hours of removal."

Response:

We thank you for your comments. We are deleting the language, "may remain in an assessment or receiving center or other unlicensed child care facility or location" and deferring to the definition of transitional care outlined in Section 31-137.1. We will also be adding "and/or any other worker involved in the placement of the child" to follow "the child's caseworker" to address your concern in regard to Section 31-137.311.

g) 15-Day Renotice Statement

Pursuant to GC section 11347.1, a 15-day renotice and complete text of modifications made to the regulations were made available to the public following the public hearing. The following testimony was received as a result of the 15-day renotice.

Comments from CCY1. Section 31-137.3Comment:

The CCY believes that it would be beneficial to add the following language to the section: "Examples of locations may include, but are not limited to assessment or receiving centers, runaway and homeless youth shelters or other child care facilities or locations."

Response:

We thank you for your comment; however the CDSS is not able to accept the recommendation at this time. These regulations are not intended to regulate a specific facility or location, but instead to ensure a basic standard of care and adequate physical environment where a child may be situated during a transition period. Specifying any facilities is outside of the scope of the regulations package and would require further analysis to ensure the needs of youth and families are met in regards to foster care services in such settings.

h) Second 15-Day Renotice Statement

Pursuant to GC section 11347.1, a second 15-day renotice, Supplement to the Initial Statement of Reasons and complete text of modifications made to the regulations were made available to the public following the public hearing. The following testimony was received as a result of the 15-day renotice:

Comments from Santa Clara County1. Section 31-137.5Comment:

Santa Clara County wants to know who the Transitional Care Prior to Placement Regulations applies to.

Response:

Thank you for your comment. We would like to clarify that the Transitional Care Prior to Placement Regulations in Manual of Policies and Procedures (MPP), Division 31, section 137 applies to county CWS and probation agencies. Further, the regulations

are specific to the time between removal of a child pursuant to MPP section 31-135; the detention of the child pursuant to Welfare and Institutions (W&I) Code section 309(d)(1) or placement of the child with a licensed or approved care provider; and the time period between removal of a child from an approved or licensed care provider. If the children residing at your Community Care Licensing (CCL) facility have already entered placement, then the regulations would not apply.

Comments from Orange County

1. Sections 31-137.22 and 31-137.23

Comment:

Orange County wants clarification on the phrase "all adults." Sections 31-137.22 and 23 discuss clearances. The language used could be misconstrued to apply to adults who are visiting a child, while the child is in Transitional Care, because it references "all adults having contact with children." The county wants clarification if this is the expectation or only that staff at the facility have clearances completed.

Response:

Thank you for your comment. The expectation is that all adults pursuant to the standards set forth in H&S Code section 1522 undergo the mandated clearances. The H&S Code section 1522 sets forth exemptions/exceptions to the background clearance standards.

2. Section 31-137.4

Comment:

Section 31-137.4 discusses inspecting the facilities, building etc., developing corrective plans if needed, and monitoring county child welfare agency compliance. Orange County wants to know if CDSS will identify the individuals mentioned in MPP section 31-137.4, or for county-operated facilities, will the county be expected to designate staff to serve in this capacity.

Response:

Thank you for your comment. The Transitional Care Prior to Placement Regulations in MPP, Division 31, section 137 applies to county CWS and probation agencies. Section 31-137.4 describes the required activities of CDSS' Children and Family Services Division (CFSD). The CFSD may delegate these activities to be conducted by CDSS' Community Care Licensing Division. Counties will not be expected to designate staff to serve in this capacity, though counties should have internal processes in place to ensure compliance is being met.

3. Section 31-137.31Comment:

Section 31-137.31 indicates "The child's caseworker and/or any worker involved in placement of the child shall enter the child's removal time, removal date and location in the child's case file within 12 hours of removal." The county states, "We have internal procedures to notify staff of any change in placement circumstance and to initiate an FCAAP. This paperwork is distributed internally, and prompts some entry into CWS/CMS. However, we do not 'document' anything else in the child's case file (such as a CWS/CMS contact narrative. Please clarify if the expectation is for the social worker actually enters a contact into CWS/CMS (i.e., case file) to capture the above information."

Response:

Thank you for your comment. The expectation is for the child's caseworker and/or any worker involved in the placement of the child is to enter the child's removal time, removal date and location in the child's CWS/CMS case file within 12 hours of the child's removal. While we understand that counties may have unique processes and internal procedures for what information is entered into CWS/CMS, for consistency, the removal time, removal date and location must be entered specifically into the CWS/CMS case file within 12 hours of removal.

4. Section 31-137.32Comment:

Section 31-137.32 indicates "In addition to the documentation required in .31, the child's caseworker and/or any worker involved in the placement of the child shall specifically identify any location where the child stayed for a period of 24 hours or more during the period of transitional care, and information explaining why the child was not placed in an approved or licensed home or facility during this time period." The county is unclear as to what is meant by "case file" and wants clarification if this means documentation in CWS/CMS such as a narrative contact. Their practice is to create a summary of placement efforts for inclusion in the court report (this summary is later imported into CWS/CMS as a document). The county wants to clarify expectations for where and how the documentation in this section is to occur (i.e., CWS/CMS contact, form, etc.).

Response:

Thank you for your comment. The expectation is for the child's caseworker and/or any worker involved in the placement of the child to enter the documentation into CWS/CMS case file. A case file is meant to be the recorded documentation for the child in CWS/CMS. It is fine to import documentation into CWS/CMS; however, the documentation must be entered into the CWS/CMS case file by the child's caseworker and/or any worker involved in the placement of the child within the 12-hour timeframe from when the child was removed as stated in Section 31-137.31.